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Ikea Distribution Services, Inc. and United Maintenance Technicians of Tejon. Case 31–RC–266527

April 19, 2021

ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS KAPLAN AND RING

The Employer’s request for review of the Regional Director’s Decision and Direction of Election, pertinent portions of which are attached, is granted as it raises substantial issues warranting review. On review, we affirm the Regional Director’s decision for the reasons that follow.

The Regional Director found appropriate a petitioned-for unit of maintenance employees at the Employer’s Lebec, California facility, applying the three-step analysis set forth in *Boeing Co.*, 368 NLRB No. 67 (2019).

We agree with the Regional Director’s finding that the petitioned-for employees share an internal community of interest under *Boeing* step one for the reasons stated in her Decision and Direction of Election.¹ Step two of the *Boeing* analysis addresses whether the petitioned-for employees are sufficiently distinct from excluded employees. While the Employer contends that the smallest appropriate unit must include 404 other hourly employees employed at the Lebec facility, the Regional Director found that the Employer was precluded from litigating this issue because its Statement of Position, though timely filed, was served on the Petitioner 1 hour and 41 minutes late. Notwithstanding this determination, the hearing officer elicited evidence regarding the excluded employees and the Decision and Direction of Election contains findings in that regard.

The Board has an affirmative statutory obligation to determine the appropriate bargaining unit in each case. *American Hospital Assn. v. NLRB*, 499 U.S. 606, 611, 614 (1991). In making that determination, the Board

may simply look at the Union’s proposed unit and, if it is an appropriate unit, accept that unit determination without any further inquiry. But, absent a stipulated agreement, presumption, or rule, the Board must be able to find—based on some record evidence—that the proposed unit is an appropriate one for bargaining before directing an election in that unit.

¹ We also agree with the Regional Director’s finding that there are no applicable guidelines that the Board has established for this industry with regard to appropriate unit configurations under *Boeing* step three.

Allen Health Care Services, 332 NLRB 1308, 1309 (2000) (internal citation and quotation omitted). Consistent with these principles, the *Boeing* step two analysis is satisfied where parties had an opportunity to litigate the inclusion of excluded employees but did not do so. In those circumstances, a regional director is not required to address the *Boeing* step two analysis in his or her decision. We find, however, that somewhat different considerations apply where, as here, a party has been *precluded* from litigating the issue due to untimely service of its statement of position.

Section 102.66(d) relevantly provides that

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party’s Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board’s statutory jurisdiction to process the petition.

We agree with the Regional Director that the Employer failed to timely serve its statement of position on the Petitioner and is therefore precluded from litigating its contention that the 404 excluded hourly employees should be included in the unit. Consistent with Section 102.66(b), however, this does not “limit the Regional Director’s discretion to direct the receipt of evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the Regional Director determines that record evidence is necessary.” See *Brunswick Bowling Products, LLC*, 364 NLRB No. 96, slip op. at 2–3 (2016) (regional director did not err in determining that contract was a bar to election petition notwithstanding that party no party raised issue in timely statement of position, where issue was apparent from face of the petition).

Accordingly, the fact that a party is precluded from litigating whether the petitioned-for unit must include additional employees under *Boeing* step two does not divest the regional director of the responsibility to determine the appropriateness of the proposed unit. Likewise, following a hearing, a regional director is not free to disregard *Boeing* step two simply because a party was precluded from presenting evidence on that issue where the record as a whole indicates that the inclusion of particular employees is required in order for the unit to be an appropriate unit. This is particularly true if the petitioned-for unit is a fractured unit. See *Boeing*, supra, slip op. at 4 fn. 5.

As noted above, the hearing officer in this case permitted the Employer to make certain offers of proof, to submit certain exhibits to complete the record (entered as Board exhibits), and to make witnesses available for examination by the hearing officer, in order to make a complete record. We find that the Regional Director conducted the inquiry contemplated by Section 102.66(b) and that her findings, and the record as a whole, support her determination that the petitioned-for unit is an appropriate unit.²

Accordingly, for these reasons, we affirm the Regional Director's Decision and Direction of Election.

Dated, Washington, D.C. April 19, 2021

Marvin E. Kaplan, Member

John F. Ring, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

CHAIRMAN MCFERRAN, concurring in the result.

I adhere to my earlier positions that both *Boeing Co.*, 367 NLRB No. 67 (2019), and *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017), were wrongly decided, and that the Board should return to the standards established in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), enfd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), approved by eight United States Courts of Appeals.

I agree with my colleagues, however, that under *Boeing*, the petitioned-for bargaining unit is appropriate, as the Regional Director found. I also agree, as my colleagues observe, that the "step two" analysis required by *Boeing* is satisfied where parties had an opportunity to litigate the inclusion of excluded employees but did not do so, and that in that setting a regional director is not required to address the *Boeing* "step two" analysis. But, contrary to my colleagues, I would not distinguish between a situation where an employer has chosen not to raise an issue concerning the appropriateness of the petitioned-for bargaining unit and a situation (as here) where the employer is

precluded by the Board's election rules from raising such an issue. Accordingly, I believe that, in this case, the hearing officer erred in admitting evidence related to *Boeing* "step two." However, I would find the hearing officer's error to be harmless because the Regional Director subsequently and correctly found the petitioned-for unit appropriate.

Dated, Washington, D.C. April 19, 2021

Lauren McFerran, Chairman

NATIONAL LABOR RELATIONS BOARD

DECISION AND DIRECTION OF ELECTION

On September 23, 2020,¹ United Maintenance Technicians of Tejon (Petitioner or Union) filed a representation petition (the Petition) under Section 9(c) of the National Labor Relations Act (the Act) seeking to represent certain employees of Ikea Distribution Services, Inc. (Employer). The petitioned-for unit was modified at the hearing to include all full-time and regular part-time maintenance technicians and power equipment technicians employed by the Employer at its facility in Lebec, California.² There are approximately 15 employees in the petitioned-for unit.

On September 23, Region 31 of the National Labor Relations Board (the Region) served a copy of the Petition on the Employer and notified the Employer of its obligation to file a Statement of Position, serve that Statement of Position on all parties, and to do so in a timely manner by noon Pacific time on Monday, October 5. On the same date, the Region issued a Notice of Representation Hearing setting a videoconference hearing for Wednesday, October 14. The Employer filed its Statement of Position with the Region on October 5, raising the substantive issue of the appropriateness of the petitioned-for unit.³ The Employer, however, failed to timely serve its Statement of Position on the Petitioner.

A videoconference hearing on the Petition was held on October 14, 15, and 16 before a hearing officer of the National Labor Relations Board (the Board). At the hearing, the Employer did not dispute that it failed to serve its

² We therefore disavow the Regional Director's speculation that the case may have turned out differently if preclusion had not applied.

¹ All dates hereinafter refer to 2020 unless otherwise noted.

² At the hearing, the parties agreed to remove the Preventative Maintenance Technicians classification from the petitioned-for unit because that classification is no longer being used at the facility at issue.

³ In its statement of position, the Employer asserted that the appropriate unit is as follows: All full-time and regular part-time employees

employed at the Employer's Tejon Distribution Center in Lebec, California in the following classifications: Auditor, Cleaner, Internal Hauler, Maintenance Technician, Preventative Maintenance Technician, Power Equipment Technician, Recovery Co-worker, Stock Controller, and Warehouse Co-worker and excluding all porary, office clerical, administrative, confidential and es, guards, and supervisors as defined by the Act.

Statement of Position on the Petitioner in a timely manner.⁴ Thus, pursuant to Section 102.63(b)(1) and 102.66(d) of the Board's Rules, I directed the hearing officer to preclude the Employer from litigating issues contained in its statement of position because it failed to timely serve a copy of it on the Petitioner. At the beginning of the hearing, the Employer made a verbal motion to reconsider my decision on the preclusion issue. The motion was denied.

Section 102.63(b)(1) of the Board's Rules states an employer named in an RC petition "shall" file a statement of position with the Regional Director and serve a copy of that statement of position on the other parties named in the petition. Section 102.66(d) of the Board's Rules, "Preclusion," states, in relevant part:

Section 102.63(b)(1) of the Board's Rules states an employer named in an RC petition "shall" file a statement of position with the Regional Director and serve a copy of that statement of position on the other parties named in the petition. Section 102.66(d) of the Board's Rules, "Preclusion," states, in relevant part:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response. . .

The Board addressed preclusion and the operation of Section 102.66(d) in *Williams-Sonoma Direct, Inc.*, 365 NLRB No. 13, slip op. at 1, fn.1 (2017). In that case, the Board concluded that the Regional Director was correct to preclude the employer from litigating the appropriateness of the petitioned-for unit based on the employer's failure to timely serve its statement of position on the petitioner. *Id.*

The Employer argues that precluding it from presenting evidence regarding the appropriateness of the petitioned-for unit denies it due process, is an unduly harsh penalty that is arbitrary and capricious, and prevents the Region from fulfilling its obligations under Section 9(b) of the Act. While a procedural rule will at times prevent a substantive issue from being addressed, that is not an unintended consequence of a preclusion rule but the intent.

Sections 102.63(b)(1) and 102.66(d) of the Board's Rules are clear in their operation, and nothing in the Employer's verbal motion to reconsider articulated at the hearing provides a valid basis for ignoring the preclusion dictated by the Board's Rules. Thus, I hereby affirm my ruling and find that the Employer was properly precluded from litigating the unit issue raised in its statement of position.

Section 102.66(d) of the Board's Rules, however, does not preclude the Regional Director from addressing an issue.⁵ See *Brunswick Bowling Products, LLC*, 364 NLRB No. 96 (2016); *Williams-Sonoma Direct, Inc.*, 365 NLRB No. 13, slip op. at 1, fn. 1 (2017). This is clear from the plain language of Section 102.66(d), which places no limitation on any person other than the defaulting party. It is also clear from the context of the provision within the structure of the Act and the Rules, including Section 102.66(b), which authorizes the Regional Director to direct the receipt of evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the Regional Director determines that record evidence is necessary, even if the parties have not taken adverse positions on the issue. *Brunswick*, 364 NLRB slip op at 4.

The Board recently clarified the standard to apply when determining the appropriateness of a petitioned-for unit in situations like here, where no party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit.⁶ In *Macys West Stores, Inc.*, 32-RC-246415, fn. 1 (unpublished May 27, 2020), the Board stated:⁷

Where no party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit, it is unnecessary to apply the three-step analysis set forth in *Boeing Company*, 368 NLRB No. 67 (2019), which applies "when a party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit." *Id.* slip op. at 2. It is true that steps one and three of *Boeing*—the requirement that any appropriate unit have an internal community of interest, and that consideration must be given to the Board's decisions on appropriate units in the particular industry involved—reference broad principles that are generally applicable to unit determinations. Step two, however—which considers "whether the petitioned-for employees share a community of interest

⁴ I also note that the Employer did not file a motion for an extension of time to file and serve its Statement of Position nor did it provide an explanation for failing to serve its Statement of Position in a timely manner.

⁵ The Employer recognized as much in its verbal motion to reconsider.

⁶ At the hearing, I directed the hearing officer to permit the Employer to submit a posthearing brief on the limited issues of the appropriate legal standard to apply in determining the appropriateness of the unit at issue

and its position on the method of election. On October 23, the Employer filed a posthearing brief and argued that the appropriate standard to apply in this matter is the traditional community of interest test set forth in *PCC Structural*, 365 NLRB No. 160 (2017). While the Employer cites to *Boeing Co.*, 368 NLRB No. 67 (2019) and the three-step process articulated therein, it does not cite to *Macys West Stores, Inc.*, *supra*.

⁷ The Board's decision is available on the Board's public website at <https://www.nlr.gov/case/32-RC-246415>.

sufficiently distinct from employees excluded from the proposed unit to warrant a separate appropriate unit,” *ibid.* (internal quotations omitted)—only applies if a party contends that additional employees must be included in the unit to render it appropriate, a situation that is not present in this case.

Accordingly, since the Employer here was precluded from asserting that additional employees must be included in the petitioned-for unit to render it appropriate, consistent with the Board’s decision in *Macys West Store*, in the following section I will apply steps one and three of *Boeing* in determining the appropriateness of the petitioned-for unit.

In addition to the appropriateness of the petitioned-for unit, the other matter to be decided in this case is whether an election should be held manually at the Employer’s Lebec, California facility or by mail ballot, considering the continuing COVID-19 pandemic.⁸ The Employer argues that any election should be by manual ballot at its Lebec facility and that it can safely hold an open-air election at the facility in compliance with all local, state, and federal guidelines and consistent with the protocols described in General Counsel Memorandum 20–10. The Employer further states that it will provide all materials required by General Counsel Memorandum 20–10. The Petitioner supports either a mail or manual ballot election.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Based on the entire record in this proceeding and relevant Board law, I find that the petitioned-for unit, as modified at the hearing to include only maintenance technicians and power equipment technicians, share a community of interest sufficient to establish that it is an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Furthermore, based on the entire record, relevant Board law, and the extraordinary circumstances of a pandemic, I shall direct a mail-ballot election commencing on the earliest practicable date.

I. THE EMPLOYER’S OPERATIONS

The Employer provides warehousing and logistic services at its facility in Lebec, California (the Facility). The Facility includes a distribution center that consists of one large warehouse that houses six buildings under one roof,

which are numbered 1 through 6.⁹ Employer product arrives at the distribution center, is sorted into different areas within the distribution center, and is shipped to other distribution centers, retail stores, and/or individual customers.

The distribution center includes Operations and Facilities.¹⁰ Employees within Operations and Facilities work toward the shared goal of making sure that the Employer’s product reaches its destination. Within Operations, there is Customer Distribution (referred to as CD or CDC) and Store Distribution (referred to as SD). The CDC is based in Building 6 and handles situations where an individual customer places an order for product.¹¹ More specifically, when an individual customer places an order for a particular product, the CDC employees get the product from within the distribution center and prepare it to be shipped via FedEx to the individual’s home. The SD is based in Buildings 1 through 5 and handles situations where a retail store places an order for product or when another distribution center needs product. Most hourly/non-exempt¹² employees work within Operations, including the auditor, internal haulers, recovery coworkers, stock controllers, and general warehouse coworkers.¹³

Facilities is charged with making sure the distribution center is operational and safe for all employees to complete their jobs in a safe manner. Within Facilities, there are the maintenance technicians, power equipment technicians, cleaners, and a sustainability developer.¹⁴ There is a maintenance shop located between Buildings 1 and 4, which is the hub for maintenance, which includes the maintenance technicians and the power equipment technicians.¹⁵ Ultimately, maintenance employees are there to make sure that the Employer’s process for ensuring that its products reach their destination is not stopped for some reason and, if it is stopped, the maintenance team is there to make sure it is mitigated and lessened as much as possible so that the process can continue.

Jermaine Gordon is the current site manager at the facility. He oversees SD Warehouse Manager Ken Brown, the SD operational support manager (vacant position), the HR manager (vacant position), Safety & Security Manager Victor Avila, Business Navigator Diane Young, Facilities Manager Aaron Lucas, CD Warehouse Manager

⁸ Throughout this decision, the terms “COVID-19,” “coronavirus,” and “virus” are used interchangeably.

⁹ The record is unclear as to whether the distribution center is the only building at the Facility. Nevertheless, the distribution center and buildings 1-6 are the only buildings at issue in this matter.

¹⁰ The record is unclear as to whether the Safety Department falls within Operations and/or Facilities or is its own separate department. I note, however, that it is regularly referred to as the Safety Department.

¹¹ An individual can place an order by phone or online.

¹² Throughout the record it appears that the terms hourly and non-exempt are used interchangeably and, therefore, I will use these terms interchangeably throughout this decision.

¹³ There are 367 general warehouse coworkers, 10 stock controllers, 10 recovery coworkers, 9 internal haulers, and 1 auditor.

¹⁴ There are 14 maintenance technicians, 1 power equipment technician, 7 cleaners, and 1 sustainability developer.

¹⁵ The witnesses regularly referenced the maintenance hub or the maintenance shop, which refer to the same location between Buildings 1 and 4.

Stephanie Rivas, and CD Operational Support Manager Jose Estrada. Facilities Manager Aaron Lucas oversees all of Facilities, including Maintenance Team Leads William Villanueva, Robert Jones, and Mitchell Newman, and Cleaners/Waste Sorters¹⁶ Team Lead Robert Spivey. He also oversees the sustainability developer. Lucas's office is located in Building 1, but the maintenance team leads have offices/desks in the maintenance shop between Buildings 1 and 4.

Hourly employees enter through the same entrance of the Facility. Hourly employees share the same common break room area for lunch.¹⁷ Hourly employees wear an Employer badge, which includes the employee's name, hire date, and employee number and is used to clock in and out. The badges do not indicate an employee's particular department or job title. Employees have access to an employee locker room, where they can get dressed before or after their shift. The employee locker room is used by various classifications of employees, including some maintenance technicians.

Full-time hourly employees are designated into different hours levels, which represents how many hours they are normally scheduled to work each week. The different levels include the following: (i) HL2, which represents 20–34 hours per week; (ii) HL3, which represents 34–40 hours per week; and (iii) HL4, which represents 38–40 hours per week. At the Facility, nearly all full-time hourly employees are within HL2 or HL3 and all maintenance are full-time HL3s.¹⁸

There are three shifts available to full-time hourly employees, including the first shift, second shift, and third shift. However, the start and end times for the second and third shifts differ between departments. For example, for maintenance technicians, the shift schedule is as follows: first shift is approximately 5:00 a.m. to 1:30 p.m., second shift is approximately 1:00 p.m. to 9:30 p.m., and third shift is approximately 9:00 p.m. to 5:30 a.m. Whereas for SD employees, the shift schedule is approximately as follows: first shift 5:00 a.m. to 1:30 p.m., second shift is 3:00 p.m. to 11:30 p.m., and third shift is 8:30 p.m. to 5:00 a.m.

The Employer pays a \$0.50 shift differential for hourly employees working the second shift and a \$1.00 shift differential for hourly employees working the third shift. The shift differential is applicable to cleaners, internal haulers, recovery coworkers, stock controllers, general

warehouse coworkers, maintenance technicians, and power equipment technicians.

The Employer offers some hourly employees an alternate work schedule, which means that they work four 10-hour days. The record is not clear as to which classifications can take advantage of the alternate work schedule or how many hourly employees do. However, some testimonial evidence suggests that maintenance technicians do not qualify for an alternate work schedule.¹⁹ Whether someone works an alternate work schedule or not will impact whether that employee is eligible for overtime. More specifically, if an employee does not work an alternate work schedule, then they are generally eligible for overtime.

The record does not reflect the precise wage rates or wage ranges for the Employer's hourly employees. However, the Employer's Interim Unit People and Culture Manager testified that the cleaner is the lowest pay grade position, and then progressing up in pay are the recovery and warehouse coworkers, then the stock controller and internal hauler, and then finally the maintenance technicians. The record is not clear as to whether the power equipment technician is at the top of this structure with the maintenance technicians.

All hourly employees are subject to the same work rules and policies, including the Employer's Code of Conduct.²⁰ In addition, all hourly employees, excluding part-time workers, are eligible for the same Employer benefits, including, but not limited to, medical, dental, vision, and retirement. All hourly employees participate in the Employer's onboarding experience on their first day of employment. All hourly employees also participate in the Employer's online digital trainings, including the following: active shooter; bomb threats general information; data privacy fundamental; data privacy test; data privacy training; data privacy training for California store coworkers; earthquake safety; emergency notification Code 1000; fire and accident prevention; fire and safety training retail; handling and sharing information; harassment awareness for Ikea coworkers and specialists; how to report an emergency; how to use a fire extinguisher; insect, snake and animal safety; ladder safety; lifting safety; lockout tagout general information; medical emergency and accident reporting; pedestrian safety in the warehouse; product safety and compliance alarm; responding to a fire; safety and social distancing; safety and social distancing module 1;

¹⁶ Waste sorters are often referred to as cleaners.

¹⁷ Employees are also allowed to leave the Facility for lunch.

¹⁸ The record is not clear as to whether this reference to "maintenance" includes both the power equipment technician and the maintenance technicians.

¹⁹ There is no record evidence clearly establishing whether or not maintenance technicians qualify for an alternate work schedule.

²⁰ The Employer's work rules and policies include the attendance policy, the behavior standards policy, the coworker discount and credit purchase policy, the general safety policy, the harassment, discrimination and retaliation prevention policy, the holiday incentive pay policy, the information security policy, the mobile device policy, the pay practices policy, the problem resolution policy, and the rest breaks and meal periods policy.

safety and social distancing module 2; safety knives; severe weather safety; supply chain security; and workplace hazard communication.

A. Maintenance Technicians

There are approximately fourteen maintenance technicians that work at the Facility. Four maintenance technicians work the 1st shift, three work the 2nd shift, and seven work the 3rd shift. After maintenance technicians clock in for work, they report to the maintenance shop between Buildings 1 and 4. Maintenance technicians have lockers in the maintenance shop, which is where they store their Employer-issued tools (including, but not limited to, screwdrivers, wrenches, sockets, pliers).²¹ The maintenance shop includes cabinets that hold replacement parts for various pieces of equipment and it has computers for the maintenance technicians to use. Maintenance technicians have around 15 Employer-issued keys, which are used to access restricted areas like solar panels, electrical panels, and the hazardous materials storage building, among others.²²

The job posting for the maintenance technician position states that its function is DC Operations²³ and that its core responsibilities include the following: (i) performing maintenance, troubleshooting, and repair on all equipment; (ii) performing inspection and adjustments as prescribed by the manufacturer; (iii) performing other duties as assigned; and (iv) contributing to an environment where the Ikea culture is a strong and living reality that embraces the diversity of coworkers and customers.

In addition to the general job functions and duties set forth in the job posting, there was substantial testimony regarding the specific job duties that maintenance technicians perform.

More specifically, on each shift, maintenance technicians work a rotation that includes either working on the floor, working preventative maintenance, working on projects, and working in the ASRS.²⁴ When working on the floor rotation, the maintenance technician handles issues relating to the conveyor system. The maintenance technician will drive around on the floor and if he receives a warning that something has broken down on the conveyor, he will go and address that breakdown.²⁵

When working preventative maintenance, the maintenance technician receives a list of jobs related to

preventative maintenance and will spend the shift going through the list and completing those tasks. Preventative maintenance can include jobs like working plumbing in bathrooms, fixing something on the outside fence line, working on the solar panels on the roof, etc. When working projects, the maintenance technician will receive work orders or requests through the CAFM system (which is described in more detail below) and will respond to immediate requests for maintenance work. It is not clear the extent of the differences between working the projects rotation and the preventative maintenance rotation.

When working on the ASRS system rotation, the maintenance technician will monitor the system for faults and breakdowns, watching for anything that may slow the production of the system. The maintenance technician will also perform preventative maintenance on all components of the ASRS system.

In order to complete these job duties, maintenance technicians have a wide range of skills, including knowing how to work plumbing, how to fix light fixtures, how to work electrical systems, how to weld, how to work with schematics, how to work hydraulic systems, how to perform carpentry work (such as erecting a podium or building something), and how to turn wrenches. The maintenance technician job posting specifically requires experience with hand tools and their proper use; proven electrical, mechanical, and/or plumbing skills; ability to troubleshoot electrical problems by reading and following a schematic; welding and fabrication skills; advanced computer skills working in a variety of software; the ability to lift 50 to 75 lbs.; an educational degree (high school diploma, general education degree, college diploma, etc.); an Ikea forklift driver certification; and a minimum of 2 years prior industrial maintenance experience is required.

Maintenance technicians also maintain licenses for various types of equipment, including the following: scissor lift, crane, counterbalance, order picker, electronic pallet jacks, reach inc. kooi forks, boom lift, and clamp truck. Each maintenance technician has a license for at least one of these pieces of equipment. Maintenance technicians also perform maintenance work on or with a variety of equipment, including, but not limited to, the following: (i) walkies, which are designed to pick up pallets; (ii) reaches, which are designed to pick product off racks; (iii) counterbalances (a.k.a. forklifts), which are designed to offload

²¹ This is not a personal locker room like the shared locker room described previously. If a maintenance technician wants to change clothes or shoes before or after a shift, they would do that in the shared locker room, not the maintenance locker room.

²² There is testimonial evidence that certain areas of the Facility are restricted to maintenance employees because they require these keys.

²³ The record does not explicitly state what DC Operations stands for; however, it appears to stand for Distribution Center Operations.

²⁴ The ASRS, which stands for Automated Storage and Retrieval System, is located in the middle of Building 6 and it is a system designed to bring product out of the racking area without having human interaction. Essentially, it is a high-tech way of sorting product. It is large, approximately 50 feet wide, 100 feet in length, and 30 feet high.

²⁵ The record is not clear regarding what the maintenance technician drives.

trailers; (iv) C trains at dock doors to move product around; (v) conveyors; (vi) batteries; (vii) wrapping paper used to shrink wrap product; and (viii) fire extinguishers.

Maintenance Team Lead Mitchell Newman supervises the four maintenance technicians and the power equipment technician that work the first shift, which is from about 5:00 a.m. to 1:30 p.m. Newman is responsible for making sure that the employees he supervises have their jobs for the shift and he also leads a pre-shift meeting.²⁶ Team leads are not designated to a specific area in the facility; rather, they are typically either in the maintenance shop (on the computers) or on the floor.

Maintenance technicians get their work assignments in a variety of ways. Maintenance technicians can receive a work order through the CAFM system, which is an application program for the maintenance employees. The CAFM work-order system is the preferred way for maintenance technicians to receive work orders because it will track the work orders and log them. In other words, management, including team leads, can track which work orders have been completed and which are outstanding through the CAFM system. Essentially, anybody who needs something done by maintenance will put in a service request and then the team leader or management will take the service request and make it into a work order, which is then distributed to the maintenance technician—typically through CAFM. A CAFM work order could be for something as small as a repair needed on a water fountain or as big as a repair needed on a conveyor belt, the ASRS system, or racking.

While maintenance technicians typically receive their work assignments from their direct supervisor/team lead, they can and do receive assignments from other team leads as well. For example, maintenance technicians can also get a work assignment by receiving a call on the radio. Team leaders from within maintenance and outside maintenance can place a call on the radio and ask for a maintenance technician to come address an issue. All maintenance technicians have a radio.²⁷ Maintenance technicians can also get a work assignment by being flagged down by another employee or any team lead. For example, if a general warehouse coworker has an issue with their forklift and sees a maintenance technician walking by, that general warehouse coworker can flag down the maintenance technician to see if they can fix the issue right there, on-the-spot.

Maintenance technicians are required to wear a long sleeve fire retardant shirt, pants, and steel-toed boots. They are not allowed to wear shorts. A uniform company launders their uniforms and brings them to the facility. When the maintenance technicians work in the ASRS in Building 6, they are required to wear hard hats. Maintenance technicians will also sometimes wear safety gloves and eye protection when working on certain equipment.

B. Power Equipment Technicians

There is currently one power equipment technician that works at the Facility. He works on the first shift. The power equipment technician clocks in for work and then reports to the maintenance shop. The record is not clear as to whether the power equipment technician uses the lockers in the maintenance shop or stores any Employer-issued tools there. There is no evidence regarding whether the power equipment technician has Employer-issued keys.

The job posting for power equipment technician describes the position function as DC Operations and states that its core responsibilities include the following: (i) diagnosing and repairing all material handling equipment; (ii) performing inspection and adjustments as prescribed by the manufacturer; (iii) performing other duties as assigned; and (iv) contributing to an environment where the Ikea culture is a strong and living reality that embraces the diversity of coworkers and customers.

In order to complete the job duties of power equipment technician, the job posting requires knowledge of how to use forklifts and other power equipment; basic MS Computer skills; exhibit a mechanical aptitude; experience with hand tools and their proper use; proven electrical, mechanical, and/or plumbing skills; welding and fabrication skills; advanced computer skills working in a variety of software; ability to obtain an Ikea forklift driver certification; the ability to lift 50 to 75 lbs.; an educational degree (high school diploma, general education degree, college diploma, etc.); a valid driver's license; a Ikea forklift driver certification; a minimum of 3–5 years of experience working on electrical forklifts required; and prior material handling equipment training preferred. In addition, the evidence indicates that the power equipment technician maintains licenses for the following types of equipment: electronic pallet jack, counterbalance, scissor lift, and reach inc. kooi forks.

The power equipment technician reports to Team Lead Newman. Although there is minimal testimonial evidence

²⁶ The record does not include evidence about who attends these meetings, how often they are held, or where they are held.

²⁷ Other leads and employees communicate with the maintenance employees through these radios. The level of access to the radios differs depending on job classification. For example, cleaners have radios and

internal haulers have a radio in their trucks. General warehouse coworkers, however, do not have radios but there is a radio in Building 1 and there are radios in Buildings 2 and 5, where general warehouse coworkers run the silos (silos are special forklifts). There are also radios in the cranes, which the general warehouse coworkers operate.

about the specific job duties of the power equipment technician, the record reveals that the power equipment technician turns wrenches on the power equipment²⁸ and works on forklifts, reaches, and the general power equipment. It appears that the power equipment technician has a work area within the maintenance shop and performs most of his work there.

The record is not clear as to how the power equipment technician receives work orders.

The record does not reveal whether the power equipment technician carries a radio or walks through the buildings at all. The record also does not reveal whether the power equipment technician is required to wear the same uniform as the maintenance technicians and/or whether the uniform is laundered by the uniform company. It is unclear whether the power equipment technician qualifies for an alternate work schedule.

There is some evidence of transfers between the classifications of maintenance technicians and power

equipment technician. Specifically, the documentary evidence indicates that one employee was a maintenance technician from September 2010 through May 2012, was a power equipment technician from May 2012 through August 2020, and then returned to the maintenance technician classification in August 2020. Another employee was a power equipment technician from June 2008 through August 2020, at which time he became a maintenance technician. However, there is no evidence of temporary assignment of duties and/or temporary interchange between the classifications.

C. Other Employees

There are approximately 404 other hourly employees employed by the Employer at the Facility. There are approximately 367 general warehouse coworkers, approximately 10 stock controllers, approximately 10 recovery coworkers, approximately 9 internal haulers, approximately 7 cleaners, and 1 auditor.²⁹

²⁸ The record is unclear as to what precisely “turning a wrench” means.

²⁹ The job posting for general warehouse coworkers states that its function is DC Operations and that they report to the warehouse team leader. It further states that the core responsibilities include the following: (i) assume major responsibility for shipping, receiving, block/storage; (ii) unload and properly handle all inbound/outbound merchandise; (iii) secure merchandise properly to allow for safe movement through the distribution center; (iv) verify articles received against corresponding paperwork, note any discrepancies to ensure 100% inventory accuracy; (v) remove and properly document all damages found or caused on inbound/outbound merchandise; (vi) properly store/stage all pallets in assigned locations; (vii) rotate to all location functions as assigned; (viii) maintain and clean and safe work area in all locations within the distribution center; (ix) attend work and contribute to an environment where the Ikea culture is a strong and living reality that embraces the diversity of coworkers and customers; and (x) perform other duties as assigned.

The job posting for stock controller states that its function is Inventory and that they report to the inventory control team leader. It further states that the core responsibilities include the following: (i) support overall Ikea inventory routines; (ii) proactive cooperation and contribution with colleagues inside and outside the department with the aim to minimize all inventory adjustments/deviations; (iii) process daily ship zero report including counting of address; (iv) process daily stock control paperwork and requests; (v) cycle count annually and correct/report deviations; (vi) audit picked pallets based on agreed requirements; (vii) ensure that goals and KPIs are met and results delivered; (viii) perform other duties as assigned; and (ix) contribute to an environment where the Ikea culture is a strong and living reality that embraces the diversity of coworkers and customers.

The job posting for recovery coworker states that its function is DC Operations and that they report to the quality team leader. It further states that the core responsibilities include the following: (i) proactive cooperation and contribution with colleagues inside and outside the departments with the aim to minimize all internal damages or other costs related to Ikea products; (ii) perform investigations with 48 hours of receipt of request based on the information received; (iii) complete all repairs in accordance with work orders and protocol; (iv) ensure smooth flow of product through the Recovery/Repair area; (v) check all damages, ensure all articles which are considered to be saleable are packaged

as close to the original packaging as possible, operate repack table to create new packaging when necessary; (vi) create and monitor tracking reports measuring results and productivity; (vii) always consider the sustainability impact when deciding when and how to recover product; (viii) perform other duties as assigned; and (ix) contribute to an environment where the Ikea culture is a strong and living reality that embraces the diversity of coworkers and customers.

The job posting for internal hauler states that its function is DC Operations and that they report to the flow team leader. It further states that the core responsibilities include the following: (i) operate yard truck in a safe manner at all times; (ii) coordinate with Flow and Operations to position all trailers and containers for loading and receiving; (iii) maintain a clean and safe work area; (iv) adhere to Internal hauler rules and processes, use creative problem solving skills and analytical skills in reaching decisions and direction; (v) ensure that goals and KPIs are met and results delivered; (vi) contribute to an environment where the Ikea culture is a strong and living reality that embraces the diversity of coworkers and customers; and (vii) perform other duties as assigned.

The job posting for cleaner states that its function is DC Operations and that they report to the Facilities team leader or manager. It further states that the core responsibilities include the following: (i) operate and maintain sweeper/scrubber machines; (ii) recycling responsibilities, emptying banana boats through the DC, able to empty and trouble shoot bailers; (iii) outside cleaning of docks, parking lots and light landscaping and painting work; (iv) maintain a clean and safe work area in all locations within the distribution center; (v) respond to requests for assistance from maintenance and warehouse staff; (vi) performs other duties as assigned; and (vii) contribute to an environment where the Ikea culture is a strong and living reality that embraces the diversity of coworkers and customers.

The job posting for auditor states that its function is DC Operations and that they report to the inventory control team leader/manager. It further states that the core responsibilities include the following: (i) collaborate with the stock control department to support overall Ikea inventory routines; (ii) audit departmental spreadsheets for discrepancies; (iii) keep track of damages and discrepancy statistics in Excel; (iv) perform general warehouse duties as needed; (v) perform other duties as assigned; and (vi) contribute to an environment where the Ikea culture is a strong and living reality that embraces the diversity of coworkers and customers.

In addition to the different duties and skills described in the job postings for the petitioned-for classifications and the other hourly employees, the record also revealed other differences. The other hourly employees have different team leads and different managers. The maintenance technicians' uniforms are different from the uniforms of the other hourly employees. The evidence also reflects that the system for working overtime is different between the maintenance technicians and the other hourly employees.³⁰

There is substantial testimonial evidence regarding the daily interactions between the maintenance technicians and these other hourly employees.³¹ The evidence reflects that the other hourly employees use various pieces of equipment to perform their job duties. Some of the other employees, including the general warehouse coworkers, use a system called a d-log in performing their job duties. The evidence essentially indicates that the maintenance technicians and the power equipment technician perform maintenance work on much of the equipment that the other hourly employees use to complete their job duties.

There is also evidence showing that there are some employees who started out as general warehouse coworkers and then worked their way to become maintenance technicians. However, there is no evidence of other classifications performing the work of a maintenance technician or a power equipment technician; nor is there any evidence of temporary assignments between the two petitioned-for classifications and the other classifications.

II. APPROPRIATENESS OF THE PETITIONED-FOR UNIT

A. Relevant Board Law

In accordance with Section 9(b) of the Act, “[t]he Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof[.]” 29 U.S.C. § 159 (b). When making a determination as to whether a petitioned-for unit is “appropriate” under Section 9(b) of the Act, “the Board’s discretion in this area is broad, reflecting Congress’ recognition ‘of the need for flexibility in shaping the [bargaining] unit to the particular case.’” *NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985) (quoting *NLRB v. Hearst Publications, Inc.*, 322 U.S. 111, 134 (1944)).

When determining an appropriate unit, the Board delineates the grouping of employees within which freedom of choice may be given collective expression. At the same

time, it creates the context within which the process of collective bargaining must function. Therefore, each unit determination must foster efficient and stable collective bargaining. *Gustave Fisher, Inc.*, 256 NLRB 1069 (1981). The Act does not require a petitioner to seek representation of employees in the most appropriate unit, but only in an appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996) (emphasis added).

The appropriateness of the petitioned-for unit is not challenged here in light of the untimely service of the Employer’s Statement of Position and the resulting preclusion. However, I am nevertheless required to determine whether the unit sought is an appropriate unit under Section 9(b) of the Act. In determining the appropriateness of a petitioned-for unit where no party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit, the Board applies steps one and three of *Boeing*—the requirement that any appropriate unit have an internal community of interest and that consideration must be given to the Board’s decisions on appropriate units in the particular industry involved. *Macys West Stores, Inc.*, 32-RC-246415, fn. 1 (unpublished May 27, 2020).

When deciding whether a group of employees shares a community of interest, the Board considers whether the employees sought: (1) are organized into a separate department; (2) have distinct skills and training; (3) have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; (4) are functionally integrated with the employer’s other employees; (5) have frequent contact with other employees; (6) interchange with other employees; (7) have distinct terms and conditions of employment; and (8) are separately supervised. *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 6 (2017) (citing *United Operations, Inc.*, 338 NLRB 123, 123 (2002)). With regard to organization of the plant, the Board has made clear that it will not approve of fractured units—that is, combinations of employees that are too narrow in scope or that have no rational basis. *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999). All relevant factors must be weighed in determining community of interest, including the Board’s established guidelines for appropriate unit configurations in specific industries. *PCC Structurals*, 365 NLRB No. 160, slip op. at 11.

³⁰ Generally, the maintenance technicians do not need pre-approval for overtime and the warehouse coworkers get overtime through a system where a sheet is posted at the SD hub and then the coworkers can sign up if they are interested in working overtime.

³¹ Given that this testimony is not relevant to the issue at hand—which is whether the petitioned-for employees have an internal community of interest to establish that it is an appropriate unit—it is not detailed in this decision.

B. Application of Board Law to the Instant Case

Based on the record evidence, I find that the evidence is sufficient to establish that the employees in the petitioned-for unit, including maintenance technicians and power equipment technicians, share an internal community of interest to make the unit an appropriate within the meaning of the Act. I further find that the facility, industry, or employer precedent does not alter this conclusion.

i. Employer's organization

An important consideration in any unit determination is whether the proposed unit conforms to an administrative function or grouping of an employer's operation. In certain circumstances, the Board will approve a unit despite the fact other employees in the same administrative grouping are excluded. *Home Depot USA*, 331 NLRB 1289, 1291 (2000).

Here, it is undisputed that the maintenance technicians and the power equipment technician are grouped within Facilities. In addition, these two classifications make up the maintenance group within Facilities. Other classifications are included within Facilities, including the cleaners and the sustainability developer, but they are not considered part of maintenance.³² Thus, the fact that the petitioned-for unit does not include all classifications within Facilities does not mandate that the unit is inappropriate, specially in cases like this one where there is another grouping—the maintenance department—within the larger Facilities.

Thus, this factor weighs in favor of finding that the maintenance technicians and power equipment technician share a community of interest.

ii. Skills and training

This factor examines whether the petitioned-for employees can be distinguished from one another based on qualifications, skills, or trainings. Evidence that employees must meet similar requirements to obtain employment, that they have similar job descriptions or licensure requirements, that they participate in the same Employer training programs, or that they use similar equipment supports a finding of similarity of skills. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penny Co., Inc.*, 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994); *Phoenician*, 308 NLRB 826 (1992).

Here, the maintenance technicians and power equipment technicians must meet similar requirements to obtain employment and they have similar licensure requirements. The job postings indicate that maintenance technicians and power equipment technicians are required to have the following same skills or experience: (i) experience with hand tools and their proper use; (ii) proven electrical, mechanical, and/or plumbing skills; (iii) welding and

fabrication skills; (iv) advanced computer skills working in a variety of software; (v) an Ikea forklift driver certification or the ability to obtain one; (vi) ability to lift 50 to 75 lbs.; and (vii) an educational degree. Differences include that a maintenance technician must have (i) the ability to troubleshoot electrical problems by reading and following a schematic; and (ii) a minimum of 2 years prior industrial maintenance experience, whereas a power equipment technician must have (i) knowledge of how to use forklifts and other power equipment; (ii) basic MS Computer skills; and (iii) a required minimum of 3–5 years working on electrical forklifts and preferred prior material handling equipment training. The similarity of requirements is greater than the differences between them.

With respect to licenses, the documentary evidence shows that the maintenance technicians maintain licenses for various types of equipment, including the following: Scissor Lift, Crane, Counterbalance, Order Picker, Electronic Pallet Jacks, Reach Inc. Kooi Forks, Boom Lift, and Clamp Truck. It also shows that the power equipment technician maintains licenses for the following types of equipment: Electronic Pallet Jack, Counterbalance, Scissor Lift, and Reach Inc. Kooi Forks. Therefore, the two classifications possess many of the same licenses for various types of equipment. I note, however, that there is insufficient evidence to determine the extent to which maintenance technicians and power equipment technicians use similar equipment in performing their job functions.

The evidence also indicates that maintenance technicians and power equipment technician participate in the same online digital trainings, which apply to all employees.

Overall, this factor weighs in favor of finding that the maintenance technicians and power equipment technician share a community of interest.

iii. Job functions and work

This factor examines whether the petitioned-for employees can be distinguished from one another on the basis of job duties or functions or the work they perform. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that employees work together as a crew, support a finding of similarity of functions. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penny Co., Inc.*, 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994).

Here, the job postings indicate that maintenance technicians and power equipment technicians have similar job duties or functions. Specifically, the postings indicate that both classifications are responsible for diagnosing or troubleshooting and repairing equipment and performing

inspections and adjustments as prescribed by the manufacturer. There is no evidence about whether the power equipment technician physically performs any work outside the maintenance shop. Thus, while the record evidence fails to show a high degree of overlap in job functions or performing one another's work, the job postings support a finding of similarity of functions. In other words, both classifications are responsible for repairing and maintaining equipment and therefore perform the same basic function.

The record does not reveal precisely whether the maintenance technician and power equipment technician use similar equipment. Nor does it reveal how the power equipment technician receives work orders.

Overall, though, despite the lacking evidence on details of the power equipment technician's daily tasks, the fact that both classifications perform the same basic function makes this factor weigh slightly in favor of finding that the maintenance technicians and power equipment technician share a community of interest.

iv. Functional integration

Functional integration refers to when employees' work constitutes integral elements of an employer's production process or business. Thus, for example, functional integration exists when employees in a unit sought by a union work on different phases of the same product or as a group provides a service. Another example of functional integration is when the Employer's workflow involves all employees in a unit sought by a union. Evidence that employees work together on the same matters and perform similar functions is relevant when examining whether functional integration exists. *Publix Super Markets, Inc.*, 343 NLRB 1023, 1024–1025 (2004); *Transerv Systems, Inc.*, 311 NLRB 766 (1993). On the other hand, if functional integration does not result in contact among employees in the unit sought by a union, the existence of functional integration has less weight.

Here, the maintenance technicians and the power equipment technician, as a group, fulfill the role of making sure that the Employer's equipment and facilities function so that the Employer's products reach their destination. Ultimately, all the hourly employees work toward the shared goal of making sure that the Employer's products reach their destination, but if the process for making sure that the products reach their destination is stopped for some reason, the maintenance team is there to make sure the disruption is mitigated and lessened as much as possible so that the process can continue. The maintenance technicians and power equipment technician provide maintenance services on various pieces of equipment that are used throughout this process, including conveyors, forklifts, and the ASRS, among others. Thus, although the two

classifications may provide different specific maintenance acts during their job duties, they ultimately serve the same purpose.

Thus, this factor weighs in favor of finding that the maintenance technicians and power equipment technician share a community of interest.

v. Contact among employees

Also relevant is the amount of work-related contact among the petitioned-for employees, including whether they work beside one another. Thus, it is important to compare the amount of contact employees in the unit sought by a union have with one another. See, e.g., *Casino Aztar*, 349 NLRB at 605–606; *Associated Milk Producers, Inc.*, 251 NLRB 1407, 1408 (1980).

Here, the limited testimonial evidence establishes that the power equipment technician essentially works inside the maintenance shop for the duration of his shift. The maintenance shop is where the maintenance technicians are based when they are not working in another location throughout the buildings. However, the testimony about the maintenance technicians' various rotations, which includes working on the floor, working preventative maintenance, working on projects, and working in the ASRS does not make clear how much of this work is done in the maintenance shop. Therefore, it is not clear how much work-related contact there is between them. For example, we do not know how often they may work beside each other, whether they ever work on the same piece of equipment, whether the power equipment technician will go out on the floor with the maintenance technician, or whether the power equipment technician also accesses the areas restricted by Employer-issued keys.

Accordingly, this factor does not weigh in favor of finding that the maintenance technicians and power equipment technician share a community of interest, but it does not necessarily cut against it.

vi. Interchange

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange "may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills." *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Resources Associates*, 301 NLRB 400, 401 (1991) (citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1981)).

Here, there is no evidence of temporary work assignments between maintenance technicians and the power

equipment technician. However, there is evidence that one employee was a maintenance technician from September 2010 through May 2012, then was a power equipment technician from May 2012 through August 2020, and then returned to the maintenance technician classification in August 2020. There is also evidence that another employee was a power equipment technician from June 2008 through August 2020, at which time he became a maintenance technician.

Thus, while this factor does not strongly support finding that the maintenance technicians and power equipment technician share a community of interest, it does not necessarily cut against such a finding.

vii. Terms and conditions of employment

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (e.g., hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment that might be described in an employee handbook. However, the fact employees share common wage ranges and benefits or are subject to common work rules does not warrant a conclusion that a community of interest exists where employees are separately supervised, do not interchange and/or work in a physically separate area. *Bradley Steel, Inc.*, 342 NLRB 215 (2004); *Overnite Transportation Co.*, 322 NLRB 347 (1996). Similarly, sharing a common personnel system for hiring, background checks and training, as well as the same package of benefits, does not warrant a conclusion that a community of interest exists where two classifications of employees have little else in common. *American Security Corp.*, 321 NLRB 1145 (1996).

Here, the maintenance technicians and the power equipment technician are hourly employees. Although the record evidence is not clear as to whether they receive similar wage rates or are within the same wage ranges, it is undisputed that they have the same fringe benefits, are subject to the same Employer work rules and policies, and are subject to the same Employer code of conduct.

The record is not clear as to whether the power equipment technician wears the same fire-retardant long sleeve shirt and pants as the maintenance technician. The testimony indicates that maintenance technicians are issued a uniform so that they can be highly visible when they are on the floor, but it is not clear whether this includes the power equipment technician, nor is it clear whether the power equipment technician ever works on the floor such that he would need a uniform to be highly visible. However, the record indicates that they both wear the same badges and steel-toed boots.

Overall, there are more similarities in terms and conditions than differences and, therefore, this factor weighs in favor of finding that the maintenance technicians and power equipment technician share a community of interest.

viii. Supervision

In examining whether the employees in dispute are commonly supervised, most important is the identity of employees' supervisors who have the authority to hire, to fire or to discipline employees (or effectively recommend those actions) or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work, and providing guidance on a day-to-day basis. *Executive Resources Associates*, 301 NLRB at 402; *NCR Corp.*, 236 NLRB 215 (1978). Common supervision weighs in favor of placing the employees in dispute in one unit. However, the fact that two groups are commonly supervised does not mandate they be included in the same unit, particularly where there is no evidence of interchange, contact, or functional integration. *United Operations*, 338 NLRB at 125. Similarly, the fact that two groups of employees are separately supervised weighs in favor of finding against their inclusion in the same unit. However, separate supervision does not mandate separate units. *Casino Aztar*, 349 NLRB at 607, fn. 11. Rather, more important is the degree of interchange, contact, and functional integration. *Id.* at 607.

Here, the maintenance technicians and the power equipment technician share the same direct supervisor—Maintenance Team Lead Mitchell Newman. Although there is no evidence regarding Newman's authority to hire, to fire, or to discipline his direct reports (or effectively recommend those actions), or regarding whether Newman evaluates or rates his direct reports, Newman testified that he is responsible for monitoring his reports' workload and making sure that everyone has their work on a daily basis. In other words, it appears that he directs and/or assigns work to his direct reports. The testimony further indicates that Newman's direct reports receive most of their work from their team lead, as opposed to from other team leads or coworkers.

Thus, this factor weighs in favor of finding that the maintenance technicians and power equipment technician share a community of interest.

ix. Summary of community of interest factors analysis

Based on the foregoing, considering all the community of interest factors, the evidence supports finding that the maintenance technicians and power equipment technician share an internal community of interest, therefore satisfying step one of *Boeing*. In reaching this conclusion, I rely on the grouping of the maintenance technician and power

equipment technician under maintenance within Facilities, the common skills and training required to obtain employment in the two classifications, as well as the similar licensure requirements. I also rely on the fact that the two classifications perform the same basic function and to the extent that there is some overlap in certain job functions, this too supports finding a community of interest. The petitioned-for employees also have common terms and conditions of employment and share supervision. Furthermore, the functional integration between the two classifications also supports finding that they share a community of interest. I acknowledge, though, that interchange was effectively neutral and that there is insufficient specific evidence of contact among the employees other than the fact that they work out of the maintenance shop. This lack of evidence, even if it indicated differences between the two classifications, would not be enough to outweigh all the other factors detailed above that support finding an internal community of interest.

I also must recognize that had the Employer timely served the Statement of Position on the Petitioner and, therefore properly asserted that additional employees must be included in the petitioned-for unit to render it appropriate, step two of *Boeing* would have applied and a different conclusion may have been reached. However, that is not the situation and/or question before me.

Thus, considering all the factors as a whole, I find that the evidence establishes that the petitioned-for unit of maintenance technicians and power equipment technicians share an internal community of interest.

x. Facility, industry, or employer precedent

Having satisfied step one of *Boeing*, step three of *Boeing* considers facility, industry, or employer precedent. Here, there does not appear to be any special facility or industry guidelines that apply to this case that would change my determination on the appropriateness of the petitioned-for unit. With respect industry guidelines, in *Boeing* the Board cited situations involving public utilities, defense contractors, and retail establishments as examples of industries that may have industry-specific guidelines. 368 NLRB No. 67, slip op. at 1 (2019). None of those situations are present in the instant matter. In addition, *Boeing* generally involved the production and maintenance industry and the Board determined that no industry-specific guidelines were applicable to the case. *Id.*

Moreover, the fact that the Petitioner seeks a less-than-plantwide unit in this industry does not require that it meet a higher burden. In *Boeing*, the Board specifically stated that no case “establishes that a less-than-plantwide manufacturing unit is presumptively inappropriate, or that a petitioner seeking such a unit bears any heightened burden of proving that it is appropriate.” 368 NLRB No. 67, slip op. at 6. Rather, “the Board has held that the appropriateness of an overall unit does not establish that a smaller unit is inappropriate.” *Id.*, citing *Montgomery Ward & Co.*, 150 NLRB 598, 601 (1964) (citing cases) (petitioned-for unit of automotive service center service department employees was appropriate, even though the employer contended that only a storewide-unit was appropriate). Accordingly, the necessary industry and facility considerations do not change my determination that the petitioned-for unit is an appropriate unit.

With respect to the consideration of employer precedent, it is true that the record does not contain evidence regarding the Employer’s precedent because the hearing officer did not call one of the Employer’s offered witnesses. Specifically, the Employer offered a witness that would have been able to testify to the makeup of bargaining units at the Employer’s facilities across the country.³³ However, even if the hearing officer had called the witness and the witness had testified as outlined in the offer of proof, that would not change the outcome of my determination that the petitioned-for unit is an appropriate unit. Based on the offer of proof, the testimony would have shown that at some of the Employer’s other distribution centers, there is one IAM bargaining unit that covers the maintenance and production employees. Here, however, IAM is not seeking to represent only the maintenance technicians and the power equipment technician. Rather, an entirely different union is seeking to represent maintenance employees and, therefore, the Employer precedent does not establish that a smaller unit within the larger unit would be inappropriate.

Thus, considering steps one and three of *Boeing*, I find that the evidence establishes that the petitioned-for unit of maintenance technicians and power equipment technicians share a community of interest sufficient to establish that it is an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.